REMARKS

This application has been carefully reviewed in light of the Office Action dated February 9, 2006. Applicants have amended claims 1, 11 and 26. Reconsideration and favorable action in this case are respectfully requested.

The Examiner has rejected claims 1-9, 11-19 and 26 under 35 U.S.C. 103 as being unpatentable over U.S. Pat. No. 6,041,313 to Gilbert, in view of U.S. Pat. No. 5,933,812 to Meyer. Claims 10 and 20 stand rejected as being unpatentable over Gilbert in view of Meyer and further in view of U.S. Pub. No. 2001/0014873. Claims 20-25 stand rejected as unpatentable over Gilbert in view of Henderson.

With regard to claims 1 and 11, the Examiner claims that Gilbert shows the calculation of settlement amounts, but states that Gilbert does not expressly teach a system and method that calculates or maintains gratuity income totals. The Examiner uses Meyer as a reference that teaches an apparatus that allows a restaurant server to electronically maintain earned gratuities.

Applicants do not dispute that prior art devices calculate settlement amounts. As described in the application, prior art devices calculate a settlement amount *without accounting for any investment withholding*. Neither Gilbert nor Meyer shows a device with this feature. The Examiner states that Gilbert teaches the step of calculating settlement amounts at col. 5, lines 8-16 and col. 7, lines 50-57. Neither of these passages even discusses settlement amounts, upon any reasonable definition of “settlement amounts”. To clarify this element, Applicants have amended the claims to specify that the settlement amount is for payment to the employee.

Applicants have reviewed the Examiner’s citations, but do not find anything that would suggest the calculation of settlement amounts based on the employee’s sales, gratuities and investment preferences. The passage at col. 5 of Gilbert discusses

employee set up, *without discussing withholding preferences*, and the passage at col. 7 discusses allocation of investments among different mutual funds. Each month, the employer enters the amount contributed by an employee into the software of Gilbert (col. 5, lines 12-16, col. 8, lines 6-10. Gilbert does not calculate investment amounts, nor does it calculate payments to employees. Since Gilbert has nothing to do with settlement, and is directed only to investments, there would be no reason for Gilbert teach anything regarding calculating a settlement amount according to withholding preferences.

Similarly, Meyer has nothing to do with investments, and has no teaching of calculating settlements according to withholding preferences.

Even when Meyer and Gilbert are combined, the element of "employer management circuitry for …calculating settlement amounts for employees according to information regarding sales and credit/debit gratuities and predefined preferences for withholding investment" is not shown. If the Gilbert software was coupled to the Meyer POS device, it would not have the ability to calculate settlements based on withholding preferences, along with sales and gratuity information, because Gilbert does not have the ability to calculate contributions and pass that information to the Meyer device. Thus, for reasons stated above with regard to independent claims 1 and 11, Applicants believe that dependent claims 2-10 and 12-20 are allowable as well. In independent claim 26, the "employer management circuitry for …calculating settlement amounts for the employees according to the information regarding commissions and individual investment preferences for withholding investment amounts defined by the employees" is not shown in either Gilbert or Meyer. Thus, Applicants believe that this claim is allowable as well.

With regard to independent claims 21 and 24, the Examiner states that Gilbert teaches all of the elements of the claims, with the exception of associating the account with the employee upon movement to a second employer. The Examiner cites page 2,

paragraph [0011], of Henderson as showing this capability. This paragraph is copied below:

> [0011] All employees like the vesting schedule for defined contribution plans--immediate vesting for employee contributions and fairly short-term vesting for employer contributions. As a result of the attractive vesting, defined contribution plans are very portable. An employee accrues a retirement benefit/account quickly and can take those monies with him or her when they leave the company. *The employee can either spend the money, with income tax and certain excise taxes applying, put the money in a tax-deferred IRA Rollover account, or transfer the money to the 401(k) plan of the employee's new employer, if that employer allows such transfers.* Another positive for employees is that many defined contribution plans allow the employee to take a plan loan or hardship withdrawal if he or she needs to access their monies prior to retirement. To evaluate the employee's perspective further, it is necessary to differentiate between two different types of employees. The minority group of "do-it-yourselfers" prefer the investment choices and investment freedom of a 401(k) plan. Most employees, however, know that they do not have the time and/or expertise to make the right decisions to satisfy their retirement goals. They are worried that they won't save enough, won't invest the monies properly, or that a rising inflation rate close to retirement, even if pre-retirement compensation rises commensurately, will leave the post-retirement level of income inadequate relative to the pre-retirement standard of living. [emphasis added]

Applicants believe that this merely a statement that contributions to a defined contribution plan immediately vest in the employee. If the employee leaves the employer for any reason, the money in the plan belongs to the employee. Hence, the employee can spend the money (incurring a tax), roll the money over to an IRA, or transfer ***the money*** to a new employer's plan, if the new employer's plan accepts transfers. This is basically

true for all employer backed investment plans. However, it must be noted that the *money* is transferred from one plan to another; the employee must cash out his or her investments in the old plan, open an account in the new employer's plan and re-invest in the new employer's plan. The Examiner's statement that "Henderson does teach that 401K's are portable and can be tracked from employer to employer" is not supported by a careful reading of the text of Henderson.

In the present invention there is no transfer of *assets* and no closing and opening accounts; instead, the employee's account is simply associated with a new employer. This provides a hassle-free way to maintain an investment account, particularly in an industry where there is frequent turnover.

Accordingly, Applicants respectfully request allowance of Claims 21-25.

An extension of one month is requested and a Request for Extension of Time under § 1.136 with the appropriate fee is attached hereto.

The Commissioner is hereby authorized to charge any fees or credit any overpayment, including extension fees, to Deposit Account No. 01-1615 of Anderson, Levine & Lintel, L.L.P.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Alan W. Lintel, Applicants' Attorney at (972) 664-9595 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

/Alan W. Lintel/

Alan W. Lintel
Attorney/Agent for Applicant(s)
Reg. No. 32478

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Anderson, Levine & Lintel
14785 Preston Rd.
Suite 650
Dallas, Texas 75254
Tel. (972) 664-9595